IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.9716 of 2007
Date of decision: 6.7.2007

Saroj Devi

-----Petitioner

Vs.

Presiding Officer & another.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Kr. N.P. Singh, Advocate
for the petitioner.

ORDER:

This petition challenges award of the Industrial Tribunal-cum-Labour Court to the extent backwages have been denied and liberty has been given to the department to hold a fresh regular inquiry.

Case of the petitioner is that she was appointed as Clerk-cum-Typist on daily wages on 31.3.1990 with respondent No.2, Punjab State Handloom Weavers Apex Co-operative Society Limited. She was regularized as Clerk w.e.f. 1.11.1991. She proceeded on leave on 12.10.1992 and continued till 28.3.1993. She joined back her duty on 2.5.1994 and again applied for maternity leave from 7.11.1994 to 30.1.1995 and earned leave from 31.1.1995 to 9.7.1995. However, she was informed that her leave from 9.4.1995 to 9.7.1995 had not been sanctioned. She represented again, but respondent No.2 did not sanction the leave and terminated her services on 5.1.1996 without

complying with Section 25-F of the Industrial Disputes Act, 1947 (for short, "the Act"). The petitioner raised an industrial dispute on 1.4.2001, on which, reference was made.

Case of the management was that the petitioner had proceeded on leave from 12.10.1992 and even after expiry of her leave, she did not join and even extended the leave. A show cause notice was given and after considering the reply, it was inferred that she was not interested in continuing her services. Her services were, thereafter, terminated in terms of conditions of appointment. Section 25-F of the Act was not attracted.

The Tribunal found that matrimonial home of the petitioner being at Noida after marriage, she was living with her husband and was not reporting for duty. However, order of termination could be passed only after inquiry. She was ordered to be reinstated subject to condition that she reports for duty within two months of publication of the award, failing which, it will be presumed that she was not interested and if she joins the duty, management will be at liberty to initiate appropriate proceedings. It was held that the petitioner was not entitled to backwages in view law laid down by the Hon'ble Supreme Court in ***Haryana State Electronics Development Corporation Limited v. Mammi*** (2006) 9 SCC 434.

We have heard learned counsel for the petitioner.

Findings recorded by the Labour Court about the conduct of the petitioner are based on record. Contention on behalf of the petitioner that she should have been awarded backwages, is without

any merit. The petitioner was absent for a long period and there was gross delay in raising of the industrial dispute itself. We do not express any opinion whether reinstatement of the petitioner could have been justified since the question raised in this petition is only about denial of backwages.

Trend of recent decisions of the Hon'ble Supreme Court was noticed in a recent DB judgment of this Court in CWP No.4980 of 2005 (**Rajinder Singh v. Presiding Officer and others),** decided on 28.3.2006 as follows:-

> "We may notice some of the recent decisions of the Hon'ble Supreme Court on the question. In **Himanshu Kumar Vidyarthi and others** v. **State of Bihar and others,** AIR 1997 SC 3657, it was observed that concept of 'retrenchment' could not be stretched to disengagement of daily wagers. In **Dhampur Sugar Mills Ltd., v. Bhola Singh,** AIR 2005 SC 1790, para 18, it was observed that completion of 240 days of continuous service may not by itself be a ground for directing regularisation of services, particularly in a case when the workman has not been appointed in accordance with rules. Reference was also made to earlier decisions. In **General Manager, Haryana Roadways v. Rudhan Singh**, (2005) 5 SCC 591, para 8, it was observed that there was no rule of thumb that in every case where Industrial Tribunal gave a finding that termination was in violation of Section 25-F of the Act, entire back wages should be awarded. Factors like method of selection, nature of appointment etc. should be weighed and balanced. One of the important factors was the length of service, which had been rendered. In

Allahabad Jal Sansthan v. Daya Shankar Rai and another, (2005) 5 SCC 124, para 6, it was held that Labour Court is entitled to grant relief having regard to facts and circumstances of each case. In para 16, it was noticed that earlier decisions of the Hon'ble Supreme Court taking the view that on dismissal being set aside, reinstatement with back wages must follow, could not be followed and it was necessary to develop a pragmatic approach by arriving at a golden mean. In **UP State Brassware Corpn.Ltd and another v. Uday Narain Pandey**, (2006) 1 SCC 479, para 22, it was observed that no precise formula can be laid down as to when full back wages should be allowed and back wages should not be granted mechanically. In para 43, changes brought about by decisions of the Hon'ble Supreme Court in the wake of prevailing market economy, globalisation, privatisation and outsourcing were noticed. Reference was also made to judgment in **Rattan Singh v**. **Union of India and another,** (1997) 11 SCC 396, Para 3, wherein consolidated compensation of Rs.25000/- was awarded instead of back wages and reinstatement."

The above trend can also be seen from judgment of the Hon'ble Supreme Court in **U.P. SRTC Ltd. v. Sarada Prasad Misra,** (2006) 4 SCC 733.

In **UP SRTC Limited** (supra), it was observed:-

"13. But even otherwise, the award passed by the Labour Court as also the order of the High Court granting back wages deserves interference. In several cases, this Court has held that payment of back wages is a discretionary power which has to be

exercised keeping in view the facts and circumstances of each case and neither straitjacket formula can be evolved, nor a rule of universal application can be adopted (vide *P.G.I. of Medical Education & Research* v. *Raj Kumar (2001) SCC 54*; *Hindustan Motors Ltd.* v. *Tapan Kumar Bhattacharya (2002) 6 SCC 41*). In *Kendriya Vidyalaya Sangathan* v. *S.C. Sharma (2005) 2 SCC 363* this Court held that when question of determination of entitlement of back wages comes up for consideration, *prima facie*, it is for the employee to prove that he had not been gainfully employed. Initial burden is on the employee to show that he remained without any employment. In several cases, similar view has been taken by this Court in recent years. In *M.P. SEB* v. *Jarina Bee (2003) 6 SCC 141* it was observed that reinstatement in service and payment of back wages are two different things and payment of back wages is not a natural consequence of setting aside an order of dismissal. In *Allahabad Jal Sansthan* v. *Daya Shankar Rai (2005) 5 SCC 124*, it was indicated that the law is not in absolute terms that in all cases of illegal termination of services, a workman must be paid full back wages. In *Haryana State Coop. Land Development Bank* v. *Neelam (2005) 5 SCC 91* it was stated that the aim and object of the Industrial Disputes Act is to impart social justice to the workman but keeping in view his conduct. Payment of back wages, therefore, would not be automatic on entitlement of the relief of reinstatement. In *G.M., Haryana Roadways* v. *Rudhan Singh (2005) 5 SCC 591* the Court reiterated that there is no rule of thumb that in each and every case, where the Industrial Tribunal records a finding that the order of

termination of service was illegal that an employee is entitled to full back wages. A host of factors which are relevant, must be taken into account.

16. From the above cases, it is clear that no precise formula can be adopted nor "cast-iron rule" can be laid down as to when payment of full back wages should be allowed by the court or tribunal. It depends upon the facts and circumstances of each case. The approach of the court/tribunal should not be rigid or mechanical but flexible and realistic. The court or tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the court or tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order."

In view of above, writ petition is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

July 06, 2007
ashwani

(AJAI LAMBA)
JUDGE